

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6266 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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KANAIYALAL SATYANARAYAN KAHAR

Versus

CHIEF OFFICER

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Appearance:

MR RAMNANDAN SINGH for Petitioner

MR PRANAV G DESAI for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/08/1999

ORAL JUDGEMENT

1. The petitioner who is holding the post of Sainik in the Fire Section of the respondent-Corporation by this petition is praying for the direction to the respondents to promote him with retrospective effect i.e. from the date on which the junior to him has been promoted to the post of Sir Sainik. This petition has been opposed by respondents. They filed the reply and thereafter there are further pleadings of the parties.

Heard the learned counsel for the parties.

2. From the documents which have been enclosed to the affidavit of the respondents dated 9th July 1999 in the civil application No.6951/99 I find that the seniority has been fixed on the basis of date of birth of the employees where both joined on the same date. This is clearly reflecting from the document at page no.70 which is there in the C.A. aforesaid.

3. It is the contention of the learned counsel for the respondents that the seniority list has been prepared on the basis of the date of the order of appointment. However, in neither of the documents which pertain to the seniority of the employees, the date of the order of appointment has been mentioned. Otherwise also, this is wholly an arbitrary criterion. The petitioner and many other persons have joined on the same date. Here reference may have to the case of Vasant Rao Shirke who and the petitioner joined on the same date but the date of birth of the petitioner is 7-9-1945 whereas his date of birth is of 1953. So that would have been the criterion in the absence of any rule which is not pointed out by the counsel for the respondents for laying down the seniority. The whole approach of the respondents to consider the petitioner junior on the criterion of the date of order of the appointment is perverse and it cannot be allowed to stand.

4. In the result, this special civil application succeeds and the same is allowed the respondents are directed to consider the case of the petitioner for promotion by preparing the seniority list of those persons who joined on the same date on the basis of their date of birth and the day on which the person immediate junior to him has been given the promotion. If the petitioner is found suitable for promotion then he shall be entitled for all the consequential benefits flowing therefrom from the date of promotion of his immediate junior aforesaid. This exercise has to be undertaken and completed in all respects within a period of three months from the date of receipt of writ of this order. Rule is made absolute in the aforesaid terms with no order as to costs.

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